SUPREME COURT OF THE UNITED STATES

No [redacted] October Term, [redacted] 1964

65

HARRY LAIKIND,

Appellant,

vs.

ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellee.

MOTION FOR LEAVE TO SUPPLEMENT
JURISDICTIONAL STATEMENT
AND
SUPPLEMENT

Victor Konow,
A Member of the Bar of
the Supreme Court of
the United States,
Counsel, at the offices
of Edward Pious,
261 Broadway,
New York, N. Y. 10007.

ity opinion (p. 352, ft. nte. 3) has recognized the lack of uniformity among some of the surrogates in the application of the statute. Neither the statute's amendment[1]; nor the amendment to the Code of Federal Regulations (Treasury Regulation here)[2a]; nor even Article II of the treaty[2b] have had any effect upon

1 Subdiv. 1(a) and (b) of exh. I in jurisdictional statement.

2a Exh. A, infra.

2b Compilation of Presidential Documents, 1968, vol. 4, no. 24, p. 956. The treaty as a whole, does not represent an easy abandonment of our traditional concepts, but rather, a most cautious, conservative, 35 year approach to a bridging of irreconcilible international orders. Because of its 3 appended "extraordinary" protocols, the treaty calls for careful preservation, on the highest plane, of those conditions which avert and remove irritations, resolve conflicts and ameliorate friction in sensitive areas. Exh. B, infra.

the Court of Appeals, who denied the motion for a rehearing premised upon the change in our relations with the U.S.S.R. nor upon divergency among the surrogates.

The presence of the Attorney General in this Kings County matter, in which the judgment debtor is a resident of Minsk[3] too, is in keeping with these differing views.

The exercise of free will and independent action by the U.S.S.R. national with respect to the funds in restraint here, without government interference, coercion, collusion, direction, control or criticism - to this day - openly contradicts state court pronouncements to

3 R. p. 21, exh. E.

TO: THE HONORABLE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF
THE SUPREME COURT OF THE
UNITED STATES.

Appellant respectfully moves this Court for permission to supplement his jurisdictional statement with facts and details of a new case, infra, undecided when this appeal was docketed on March 15, 1969.

Dated: March 31, 1969.

Victor Konow,
A Member of the Bar of
the Supreme Court of
the United States,
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261 Broadway,
New York, N. Y. 10007.

TO: ATTORNEY GENERAL OF THE
STATE OF NEW YORK

On the 24th day of March, 1969, the New York Law Journal, published on page 16, a decision made by a New York County Surrogate on March 19, 1969, in the Estate of Jacob Adelson, index no. 5784 - 1965, saying:

> "The distributive share of Abraham Adelson will be paid by transmittal of the sum due through the facilities and services of Vnestorg Bank and/or Vneshpostyltorg, Moscow, U.S.S.R."

Albert N. Androssov, Deputy Chief of the Consular Division of the U.S.S.R., in the District of Columbia, on February 27, 1969, signed a notice of appearance, on record in this matter, stating he "is acting on behalf of Abraham Adelson", a resident of Minsk, U.S.S.R., who is a distributee of his deceased

brother, Jacob.

Another brother of the deceased, a resident of the United States, petitioned the surrogate to order:

> "(T)he balance of said distributive share of ABRAHAM ADELSON be held by petitioner or another relative for the benefit of ABRAHAM ADELSON and that food packages be purchased and sent to ABRAHAM ADELSON and/or his wife in the U.S.S.R."

No objections were entered by the Deputy Consul to the petitioner's request.

The note of the law assistant to the surrogate says:

> "Instructions requested re payment for food packages sent and to be sent to a distributee residing in Russia - - -."

The Court of Appeals, in its ma-

the contrary. They have changed, but we, in our state, as yet, have not seen their light.

Dated: March 31, 1969

Respectfully submitted,

Victor Konow,
A Member of the Bar of
the Supreme Court of
the United States,
Counsel, at the offices
of Edward Pious,
261 Broadway,
New York, N. Y. 10007.

APPENDIX.

Exhibit A

"On the basis of information available to the Secretary of the Treasury, including advice received from the Department of State, the Secretary has determined that postal, transportation and banking facilities in general, and local conditions in - - - the Union of Soviet Socialist Republics are such that there is a reasonable assurance that the payee of a check or warrant drawn against funds of the United States, or any agency or instrumentality thereof, will actually receive such a check or warrant and be able to negotiate it for full value. - - -.

"Accordingly, § 211.2(a), Subchapter A, Chapter II of Title 31 of the Code of Federal Regulations is amended to read as follows:

"It is hereby determined that postal, transportation, or banking facilities in general or local conditions in Albania, Communist-controlled China, Cuba, North Korea, North Viet-Nam, the Russian Zone of Occupation of Germany, and the Russian Sector of Occupation of Berlin, Germany, are such that there is not a reasonable assurance that a payee in those areas will actually receive checks or warrants drawn against funds of the United States, or agencies or instrumentalities thereof, and be able to negotiate the same for full value." (In effect June 28, 1968)

Exhibit B

ARTICLE 10

1. In the case of the death of a national of the sending state in the territory of the receiving state, without leaving in the territory of his decease any known heir or testamentary executor, the appropriate local authorities of the receiving state shall as promptly as possible inform a consular officer of the sending state.

2. A consular officer of the sending state may, within the discretion of the appropriate judicial authorities and if permissible under then existing applicable local law in the receiving state:

(a) take provisional custody of the personal property left by a deceased national of the sending state, provided that the decedent shall have left in the receiving state no heir or testamentary executor appointed by the decedent to take care of his personal estate; provided that such provisional custody shall be relinquished to a duly appointed administrator;

(b) administer the estate of a deceased national of the sending state who is not a resident of the receiving state at the time of his death, who leaves no testamentary executor, and who leaves in the receiving state no heir, provided that if authorized to administer the estate, the consular officer shall relinquish such administration upon the appointment of another administrator;

(c) represent the interests of a national of the sending state in an estate in the receiving state, provided that such national is not a resident of the receiving state, unless or until such national is otherwise represented: provided, however, that nothing herein shall authorize a consular officer to act as an attorney at law.

3. Unless prohibited by law, a consular officer may, within the discretion of the court, agency, or person making distribution, receive for transmission to a national of the sending state who is not a resident of the receiving state any money or property to which such national is entitled as a consequence of the death of another person, including shares in an estate, payments made pursuant to workmen's compensation laws, pension and social benefits systems in general, and proceeds of insurance policies.

The court, agency, or person making distribution may require that a consular officer comply with conditions laid down with regard to: (a) presenting a power of attorney or other authorization from such nonresident national, (b) furnishing reasonable evidence of the receipt of such money or property by such national, and (c) returning the money or property in the event he is unable to furnish such evidence.

4. Whenever a consular officer shall perform the functions referred to in paragraphs 2 and 3 of this Article, he shall be subject, with respect to the exercise of such functions, to the laws of the receiving state and to the civil jurisdiction of the judicial and administrative authorities of the receiving state in the same manner and to the same extent as a national of the receiving state.